

² 5 U.S.C. § 8101 *et seq.*

sprain, cervical radiculitis, and displacement of cervical herniated disc at C6-7 conditions due to her accepted May 14, 2009 employment injury; and (2) whether appellant has met her burden of proof to establish continuing residuals on or after March 15, 2016 causally related to her accepted May 14, 2009 employment injury.

FACTUAL HISTORY

On May 14, 2009 appellant, then a 46-year-old letter carrier, filed a traumatic injury claim (Form CA-1) alleging that on that date she injured her head and neck when she was rear ended by a motor vehicle causing her to hit the car in front of her while in the performance of duty.³ She stopped work on May 15, 2009.⁴ OWCP accepted appellant's claim for cervical strain, cervical radiculitis, and concussion, and subsequently expanded acceptance of her claim to include cervical herniated disc with radiculopathy at C6-7. It paid her wage-loss compensation on the supplemental rolls, effective June 29, 2009, and on the periodic rolls, effective August 2, 2009.

On November 16, 2009 appellant returned to part-time, limited-duty work for approximately one to four hours per day. OWCP paid her intermittent wage-loss compensation on the supplemental rolls for partial disability. Appellant stopped work again on December 7, 2010 and was placed back on the periodic rolls, effective December 19, 2010.⁵

On December 2, 2013 appellant returned to part-time, limited-duty work for approximately four hours per day. OWCP continued to pay her wage-loss compensation on the supplemental rolls for the remaining four hours per day.⁶

Appellant continued to work part-time, limited-duty work for approximately one to five hours per day. OWCP paid wage-loss compensation for the remaining hours per day.

OWCP subsequently referred appellant, along with a statement of accepted facts (SOAF), a copy of the case record, and a series of questions, to Dr. David B. Lotman, a Board-certified

³ OWCP assigned the present claim OWCP File No. xxxxxx642. Appellant has two previously accepted traumatic injury claims. Under OWCP File No. xxxxxx087, OWCP accepted an April 10, 2002 traumatic injury claim for right shoulder contusion, neck sprain, and brachial neuritis. Under OWCP File No. xxxxxx159, it accepted a January 21, 2006 traumatic injury claim for conditions of cervical sprain, right shoulder contusion, and common migraines. OWCP has administratively combined OWCP File Nos. xxxxxx159, xxxxxx642, and xxxxxx087, with the latter claim designated as the master file.

⁴ Appellant was working a modified-duty position due to the January 21, 2006 employment injury.

⁵ By decision dated January 22, 2013, OWCP terminated appellant's wage-loss compensation and medical benefits, effective January 22, 2013, because the medical evidence of record established that she no longer had disability or residuals causally related to her accepted May 14, 2009 work-related injury.⁵ In a September 11, 2013 decision, OWCP's hearing representative reversed the January 22, 2013 termination decision and reinstated appellant's entitlement to wage-loss compensation and medical benefits.

⁶ By decision dated December 24, 2014, OWCP terminated appellant's wage-loss compensation benefits, effective December 24, 2014, because the medical evidence of record established that she was no longer partially disabled due to her accepted May 14, 2009 work-related injury. In a May 18, 2015 decision, OWCP's hearing representative reversed the December 24, 2014 termination decision and reinstated appellant's entitlement to wage-loss compensation and medical benefits.

orthopedic surgeon, for a second opinion evaluation regarding the status of her accepted May 14, 2009 employment injury. In a June 29, 2015 report, Dr. Lotman indicated that he had reviewed the SOAF and noted appellant's accepted conditions under the current claim for neck sprain, cervical radiculitis, concussion, and displacement of cervical herniated disc at C6-7. He recounted that appellant had two previously accepted claims for cervical sprains. Dr. Lotman discussed appellant's medical records and noted that an April 18, 2013 cervical spine magnetic resonance imaging (MRI) scan revealed small right paracentral disc herniation at C5 with a disc bulge at C6. He recounted appellant's current complaints of occipital headaches, neck pain, and pain and dysesthesias in her upper extremities. On physical examination, Dr. Lotman observed normal cervical lordosis with diffuse midline tenderness, tenderness in the levator scapulae on the right without spasm, and bilateral paraspinous pain without associated paraspinous spasm. Examination of the upper extremities demonstrated decreased sensation bilaterally involving the lateral portion of the upper arm.

In response to OWCP's questions, Dr. Lotman responded that there were no clinical findings to support residuals from appellant's current claim. He reported that appellant's "cervical sprain had resolved and there is no current evidence objectively consistent with cervical disc herniation." Regarding appellant's cervical radiculitis, Dr. Lotman reported that appellant may have residuals of cervical radiculitis and recommended repeat electrophysiological studies. He indicated that appellant was able to work her modified letter carrier position.

Appellant underwent a cervical spine MRI scan on September 9, 2015, which revealed left foraminal stenosis at C4-5, C5-6, and C6-7 and disc bulge and small herniation at the C6-7 level.

A December 9, 2015 electromyography and nerve conduction velocity (EMG/NCV) study revealed a moderate degree of ulnar neuropathy across the elbow, a moderate degree of carpal tunnel syndrome on the right, a mild degree of carpal tunnel syndrome on the left, and no evidence of cervical radiculopathy on either upper extremity.

In a January 13, 2016 supplemental report, Dr. Lotman indicated that he had reviewed electrodiagnostic studies performed on December 9, 2015. He noted that the EMG of both upper extremities was normal and showed no evidence of cervical radiculopathy on either side. Dr. Lotman concluded that appellant had underlying cervical spondylosis, but no objective evidence of continuing symptomatology from a cervical strain, cervical radiculitis, or cervical disc herniation.

In a letter dated February 5, 2016, OWCP proposed to terminate appellant's medical benefits as the evidence of record established that she no longer had residuals of her accepted cervical sprain, cervical radiculitis, and displacement of cervical herniated disc at C6-7 conditions due to her accepted May 14, 2009 employment injury. It found that the weight of the medical evidence rested with the June 29, 2015 and January 13, 2016 reports of Dr. Lotman, the second opinion physician. OWCP afforded appellant 30 days to respond if she disagreed with the proposed termination.

Appellant subsequently submitted a January 27, 2016 report and duty status report (Form CA-17) from Dr. Dannell Anschuetz, an osteopath Board-certified in physical medicine and rehabilitation, who indicated that she had treated appellant for neck pain. Upon examination of

appellant's neck, she observed spasm and tenderness of the suboccipitals, paracervical, trapezius, and peri-scapular muscles and abnormal range of motion (ROM). Dr. Anschuetz also noted positive Distraction and Compression tests. She diagnosed other cervical disc degeneration, cervical radiculopathy, and contracture of muscle.

In a March 3, 2016 statement, appellant, through her then-representative, asserted that OWCP failed to request a supplemental report from Dr. Millheiser, regarding whether she continued to suffer residuals of her May 14, 2009 employment injury.

By decision dated March 15, 2016, OWCP finalized the termination of appellant's medical benefits, effective March 15, 2016. It found that the weight of the medical evidence rested with Dr. Lotman, OWCP's second opinion examiner, who concluded that she had no residuals due to her accepted cervical sprain, cervical radiculopathy, and displacement of cervical herniated disc at C6-7.⁷

On March 29, 2016 appellant, through her then-representative, requested a telephonic hearing before a representative of OWCP's Branch of Hearings and Review, which was held on November 7, 2016.

Appellant submitted additional reports dated April 18 through November 17, 2016 from Dr. Anschuetz regarding her ongoing treatment for complaints of neck and shoulder pain. In the April 18, 2016 examination report, Dr. Anschuetz noted her disagreement with Dr. Lotman's reports. She explained that the electrodiagnostic study did not include study of the cervical paraspinals and; therefore, cervical radiculopathy could not be ruled out.

In a January 6, 2017 decision, OWCP's hearing representative affirmed the March 15, 2016 termination decision.

Appellant, through her then-representative, subsequently requested reconsideration on December 9, 2017 and May 9, 2018.

Appellant submitted additional reports and CA-17 forms dated January 26, 2017 through April 5, 2018 from Dr. Anschuetz regarding her continued medical treatment for daily neck pain and headaches.

By decisions dated March 12 and July 25, 2018, OWCP denied modification of its prior decisions.

On July 23, 2019 appellant, through counsel, requested reconsideration.

In a July 10, 2019 narrative report, Dr. Anschuetz again noted her disagreement with Dr. Lotman's second opinion reports and opined that appellant continued to suffer from the accepted cervical conditions causally related to the May 14, 2009 work injury. She also noted that the conditions of cervical herniated discs at C4-5 and C5-6, cervical spondylosis, and bilateral

⁷ OWCP noted that Dr. Lotman did not state that all of appellant's accepted medical conditions had resolved, but opined that only the accepted neck sprain, cervical radiculopathy, and displacement of cervical herniated disc at C6-7 had ceased.

peripheral neuropathy were likely directly related to the May 14, 2009 work injury and requested further testing to confirm these diagnoses. Dr. Anschuetz reported that appellant continued to exhibit abnormal range of motion in her physical examination findings, which was an objective symptom consistent with cervical sprain. She also indicated that from April 2018 through May 2019, appellant consistently had positive distraction, compression, and lateral compression test results, which was a sign of cervical radiculopathy. Dr. Anschuetz further noted that the 2014 cervical spine MRI scan had confirmed disc herniation at C6-7.

By decision dated September 6, 2019, OWCP denied modification of its prior decision.

On April 20, 2020 appellant, through counsel, requested reconsideration and submitted additional medical evidence.

In a February 14, 2020 narrative report, Dr. Anschuetz described the May 14, 2009 employment incident and reported diagnoses of cervical radiculopathy, other cervical disc degeneration, cervical spine sprain, and cervical spondylosis. She alleged that Dr. Lotman provided no medical rationale for why he believed that appellant's cervical sprain had resolved. Dr. Anschuetz also asserted that Dr. Lotman improperly relied solely on electrodiagnostic studies as evidence that appellant no longer suffered from cervical radiculopathy. She explained that both an MRI scan and EMG/NCV study were needed to confirm motor and sensory abnormalities. Dr. Anschuetz concluded that appellant's accepted cervical injuries of cervical sprain, cervical radiculopathy, and cervical disc herniation at C6-7 had not resolved and that appellant had additional conditions of cervical spondylosis and cervical disc herniations at C4-5 and C5-6 as a result of her May 14, 2009 employment injury.

By decision dated July 16, 2020, OWCP denied modification of its prior decision.

LEGAL PRECEDENT -- ISSUE 1

According to FECA,⁸ once OWCP accepts a claim and pays compensation, it bears the burden of proof to justify termination or modification of benefits.⁹ OWCP's burden of proof includes the necessity of furnishing rationalized medical opinion evidence based on a proper factual and medical background.¹⁰

The right to medical benefits for an accepted condition is not limited to the period of entitlement for disability compensation.¹¹ To terminate authorization for medical treatment,

⁸ *Supra* note 2.

⁹ *A.D.*, Docket No. 18-0497 (issued July 25, 2018); *S.F.*, 59 ECAB 642 (2008); *Kelly Y. Simpson*, 57 ECAB 197 (2005); *Paul L. Stewart*, 54 ECAB 824 (2003).

¹⁰ *R.R.*, Docket No. 19-0173 (issued May 2, 2019); *T.P.*, 58 ECAB 524 (2007); *Del K. Rykert*, 40 ECAB 284 (1988).

¹¹ *L.W.*, Docket No. 18-1372 (issued February 27, 2019); *Kathryn E. Demarsh*, 56 ECAB 677 (2005).

OWCP must establish that the employee no longer has residuals of an employment-related condition, which require further medical treatment.¹²

ANALYSIS -- ISSUE 1

The Board finds that OWCP did not meet its burden of proof to terminate appellant's medical benefits, effective March 15, 2016, as she no longer had residuals of her accepted cervical sprain, cervical radiculitis, and displacement of cervical herniated disc at C6-7 conditions due to her accepted May 14, 2009 employment injury.

OWCP accepted that appellant sustained cervical strain, cervical radiculitis, concussion, and displacement of cervical herniated disc at C6-7 as a result of her May 14, 2009 employment injury. By decision dated March 15, 2016, it terminated her medical benefits based on the opinion of Dr. Lotman, the second opinion examiner, who concluded in June 29, 2015 and January 13, 2016 reports that appellant no longer suffered residuals of her cervical conditions causally related to her accepted May 14, 2009 employment injury.

In a June 29, 2015 report, Dr. Lotman described the May 14, 2009 employment injury and provided examination findings. In response to OWCP's questions, he indicated that appellant's "cervical sprain had resolved and there is no current evidence objectively consistent with cervical disc herniation." Regarding appellant's cervical radiculitis, Dr. Lotman reported that appellant may have residuals of cervical radiculitis and recommended repeat electrophysiological studies. In a January 13, 2016 supplemental report, Dr. Lotman explained that a December 9, 2015 EMG/NCV study was normal with no evidence of cervical radiculopathy on either side. He concluded that appellant had underlying cervical spondylosis, but no objective evidence of symptomatology from a cervical strain, cervical radiculitis, or cervical disc herniation.

The Board finds, however, that Dr. Lotman's opinion was conclusory in nature and did not contain sufficient medical reasoning to establish that appellant no longer had residuals of her cervical conditions due to her May 14, 2009 employment injury.¹³ Although he opined that there was no objective evidence to establish that appellant still suffered from her accepted cervical conditions, Dr. Lotman also indicated that appellant had diffuse midline tenderness and bilateral paraspinous pain upon examination. He further noted that an April 2013 cervical spine MRI scan report revealed small right paracentral disc herniation at C5 with a disc bulge at C6. Dr. Lotman failed to explain, which objective findings of record established that appellant's accepted cervical conditions had resolved.¹⁴ Rationalized medical evidence must include rationale explaining how the physician reached the conclusion he or she is supporting.¹⁵ Accordingly, the Board finds that Dr. Lotman's report lacks sufficient medical reasoning to establish that appellant's accepted

¹² *R.P.*, Docket No. 17-1133 (issued January 18, 2018); *A.P.*, Docket No. 08-1822 (issued August 5, 2009).

¹³ *See C.G.*, Docket No. 20-0808 (issued April 23, 2021); *J.W.*, Docket No. 19-1014 (issued October 24, 2019).

¹⁴ *See G.G.*, Docket No. 20-0513 (issued January 12, 2021).

¹⁵ *B.B.*, Docket No. 19-1102 (issued November 7, 2019); *Beverly A. Spencer*, 55 ECAB 501 (2004).

cervical sprain, cervical radiculitis, and cervical disc herniation conditions causally related to her May 14, 2009 employment injury had resolved.

Once OWCP undertook development of the record it was required to complete development of the record by procuring medical evidence that would resolve the relevant issue in the case.¹⁶ As it did not request that Dr. Lotman provide a supplemental opinion clarifying his opinion, the Board finds that OWCP did not meet its burden of proof in terminating appellant's medical benefits.¹⁷

CONCLUSION

The Board finds that OWCP did not meet its burden of proof to terminate appellant's medical benefits, effective March 15, 2016.

ORDER

IT IS HEREBY ORDERED THAT the July 16, 2020 decision of the Office of Workers' Compensation Programs is reversed.

Issued: August 4, 2021
Washington, DC

Alec J. Koromilas, Chief Judge
Employees' Compensation Appeals Board

Janice B. Askin, Judge
Employees' Compensation Appeals Board

Patricia H. Fitzgerald, Alternate Judge
Employees' Compensation Appeals Board

¹⁶ See *J.F.*, Docket No. 17-1716 (issued March 1, 2018).

¹⁷ In light of the Board's disposition of Issue 1, Issue 2 is rendered moot.